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FEDERAL COMMUNICATIONS COMMISSION
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Chairman William Kennard
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

Re: Facilities-Based Residential Telephone Competition

Dear Mr. Chairman:

The Commission, Congress, and the telecommunications industry are coming to grips with an uncomfortable fact: two and a half years after the 1996 Act, actual competitive entry into residential telephone services is scarce or nonexistent in most markets. It is certainly not even approaching the level at which competitive local exchange carriers ("CLECs") can begin to provide a competitive check on the incumbent local exchange carriers ("ILECs").

Lost in the debate, however, is any discussion of the single most substantial barrier to facilities-based residential telephone competition in MDUs — the ability of ILECs to impede or prevent competitive entry through the establishment of multiple or inaccessible demarcation points in multi-unit buildings — the points at which the ILEC's network connect with the telephone "inside wiring."

OpTel's Entry Into Residential Telephone Service

In the United States, there are over 13.2 million MDU units in structures of 10 units or more. Today, approximately 19% of Americans live in MDU units. That number is expected to grow as population density increases and metropolitan areas are revitalized. Consequently, the ability of the Commission to promote an

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environment in which competition for telecommunications services to MDUs can flourish will, in large part, determine the success of the current efforts to break the monopolies held by the ILECs at the local level.

OpTel, Inc. ("OpTel") provides facilities-based multichannel video programming competition to franchised cable operators in eleven major U.S. cities and recently has begun roll-out of telephony services. Using its advanced point-to-point microwave networks, OpTel now is able to provide an integrated package of voice, video, and data services to the MDUs it serves.

In two of its major markets (Houston and Dallas-Ft. Worth), OpTel now uses its own Class 5 central office switches to provide facilities-based residential telephone competition to the ILEC. OpTel is in the process of expanding its telecommunications infrastructure in other markets and expects, by the end of calendar year 1999, to offer facilities-based telecommunications in each of its major markets. In anticipation of these developments, OpTel now is licensed as a CLEC in each major market in which it operates.

Substantially all of the MDUs OpTel serves are campus-style or garden-style complexes (i.e., complexes comprised of several buildings). OpTel enters into service agreements with MDU property owners and ownership associations to provide services to the residents of the MDU. As part of its agreements, OpTel often upgrades and maintains all telecommunications architecture on the inside wiring side of the demarcation point, including premises wiring and campus distribution.

In those areas in which OpTel is providing residential local exchange telephone service, it does so at rates that generally are lower than those charged by the ILEC. For example, according to our market analysis, OpTel's retail rate for basic local exchange service is 5% lower than the price for the same service from the ILECs in Chicago, San Francisco, Los Angeles, San Diego, and South Florida. OpTel's basic retail rate is close to 10% lower than the ILECs' in Indianapolis, Denver, and Phoenix. The price differential grows when enhanced services are involved, which OpTel normally provides for about 65% of the rate charged by the ILECs.

The "Demarcation Point" Barrier To Entry

In the vast majority of cases, OpTel brings its telephone product to MDUs at the request of the MDU ownership or management, normally because of their dissatisfaction with the quality of service provided by the ILEC. In other cases MDU owners and managers are seeking to offer the choice of a less expensive telephone service as an incentive to potential tenants. Indeed, a by-product of the dawn of the information age has been that MDU residents regard the availability of high-quality, low-cost cable and communications services to be one of the most significant amenities that an MDU can offer.

OpTel is in the business of providing these high-quality, low-cost services. OpTel has found, however, that many MDU networks, virtually all of which were installed or designed by ILECs, have been configured so as to create a barrier to entry for new competitors.

For example, BellSouth has acknowledged informally to OpTel that it designs MDU networks so that it can control the customer at the BellSouth switch, obviating the need to roll a truck for most service calls, and also effectively foreclosing access by a competitor that does not wish to collocate at the BellSouth switch. BellSouth's position, accordingly, is that the demarcation point for each unit in an MDU is at the first jack in each individual unit. Collocation, however, is expensive and inefficient, requiring a CLEC to buy loops from the ILEC rather than use its own facilities.

Thus, when the demarcation point is located at the wall jack for single line customers in multi-customer buildings, as BellSouth maintains, CLECs seeking to provide residential service at an MDU have only one choice — they must install an entirely redundant and duplicative system in the MDU. This entails substantial excavation, wall and conduit opening, and rewiring to overbuild facilities throughout the property and to each unit. Not only is such overbuilding cost prohibitive, often infeasible and always disruptive, it simply is not an acceptable approach for property owners.

Overbuilding in this context also involves an inefficient use of competitive resources. Once a CLEC overbuilds the existing ILEC network, the inside wire

line installed by the ILEC would remain in the walls unused — a dead wire — following the resident's switch to CLEC service. Likewise, should the resident ever switch back to the ILEC for any reason, the overbuilt facilities would be superfluous. Any future competitor presumably would have to again overbuild the entire MDU complex to provide service.

Other ILECs use other configurations to the same end. US WEST, for instance, often uses several points of entry onto a single property with multiple structures, thus requiring CLECs to interconnect at numerous demarcation points. Whatever the precise configuration, however, the establishment of demarcation points by the ILECs in order to raise the cost of entry has operated as a barrier to competition.

In most states in which OpTel competes, the ILECs simply have refused to reconfigure their networks to accommodate new entrants. US WEST, for example, simply states that its tariff does not require it to reconfigure MDU networks to allow for a single demarcation point except in the case of new buildings and buildings that have been substantially remodeled. Indeed, OpTel has been told by US WEST officials that it is "not in the best interest of US WEST" to reconfigure MDUs to a single accessible demarcation point.

Further, even in markets in which state authorities have required ILECs to reconfigure their MDU networks to accommodate competitive entry, the ILECs have engaged in deliberate foot-dragging and insisted that the new entrant seeking to provide service pay (in advance) for network modifications necessary to allow competition.

By contrast, when OpTel configures or reconfigures an MDU network, it often is required by state law to bring all inside wiring on the premises to a single demarcation point so that others (including the ILEC) can have non-discriminatory access to the MDU. Indeed, even in states in which OpTel is not required to do so, it uses a single demarcation point configuration.

The tactics of the ILECs with respect to the establishment of a demarcation point in MDUs impede the development of competition by raising the cost of providing service beyond the point at which it is practical and undermining the credibility of the new entrant attempting to negotiate a service contract with the

owners and managers of an MDU. OpTel's ability to provide dependable and timely telephone service has been severely damaged, and its credibility and reputation adversely affected by these behaviors. As a result, OpTel has been wrestling with these tactics on a state-by-state basis since the President signed the 1996 Act.

The Time Has Come For A Uniform Federal Solution

OpTel is poised to make the necessary investment to bring facilities-based residential telephone competition to end-user customers in MDUs. In those markets in which OpTel already is providing its own switched-telephone services, its services are comparable or better, at lower prices, than those offered by the ILECs with which it competes. Unfortunately, as explained above, the ILECs' practices with respect to the establishment of the demarcation point often make it cost prohibitive or otherwise impracticable for CLECs to provide residential telephone service in MDUs. At best they result in substantial delay and an impediment to the delivery of competitive services.

The FCC traditionally has left the establishment of demarcation points largely within the discretion of the ILECs themselves[1] and the ILECs' efforts to use that discretion to thwart competitive entry into residential telephone services has gone largely unnoticed at the federal level. Indeed, the only occasion that OpTel has had to raise the issue in formal proceedings under federal law is in the context of Section 271 applications by the RBOCs. Although it is altogether fitting and proper for the states, the Department of Justice, and the FCC to consider the issue in this context, Section 271 review simply does not provide a sufficient incentive for ILECs to allow practical and economic residential telephone competition in MDUs.

For that reason, the Commission should consider modifications to its demarcation point rules and policies. Competitive providers must have the ability to access MDU facilities at a single point on the property, proximate to the property boundary line, and ILECs must be required to provide the means of connection at this single demarcation point timely and without delay.

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[1] 47 C.F.R. § 68.3 (in most existing MDUs, the demarcation point is to be determined in accordance with the ILECs "reasonable and non-discriminatory standard operating practice"; in new installations, the ILECs "may establish a reasonable and nondiscriminatory practice of placing the demarcation point at the minimum point of entry").

Specifically, the FCC should require that all LECs establish a single demarcation point in any MDU of more than 50 units at the point of interconnection between the telephone company communications facilities and the MDU inside wire. In the multi-unit environment, a network interface device ("NID") required to interconnect the customer inside wiring to the telephone company network should be accessible to all certificated carriers and located at the demarcation point. At a subscriber's choice, carrier selection could then be accomplished by a simple and single cross-connect at the NID.

The location of this single demarcation point should no longer be left to the discretion of the ILECs. Instead, the Commission should require ILECs to establish the demarcation point in any given MDU at the minimum point of entry ("MPOE") onto the premises, which should normally be the closest practical and accessible point to where the telephone company's wire crosses the property line.

To make this rule effective, it should not apply only to new and remodeled buildings, and to situations in which the ILEC has no standard operating practice, but to all MDU installations involving more than 50 units. In buildings at which the ILEC maintains multiple demarcation points or otherwise has installed a network that does not comply with these rules, the ILEC should be required to reconfigure its wiring, without unreasonable delay, in accordance with these rules upon *bona fide* request by a CLEC seeking access to the premises.[2] The new competitor making the request should be required to share in the reasonable and actual costs of the required reconfiguration.

By establishing a single demarcation point at the MPOE and providing that all certificated carriers must be given access to the NID so that a change in service providers by any resident in the building can be effectuated by a single cross-connect at the NID, the FCC would help to make competitive local exchange service a reality in the multi-tenant environment.

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[2] Absent a showing to the contrary, the Commission should presume that any reconfiguration requiring more than 90 days is unreasonable.

Sub-Loop Access

In connection with actions requested above, the Commission should consider other means through which facilities-based competitors might obtain access to MDU residents on a non-discriminatory basis. For example, OpTel has in the past advocated sub-loop unbundling that would make available elements such as street cabinets, splicing cages, etc., at which lines (i.e., twisted pair) dedicated to individual residential units terminate.

ILECs often configure their networks on the line-side of the switch to include one or more street cabinets or other facilities located proximate to an MDU property. From the street facilities dedicated lines run to the individual buildings and units. As discussed above, there is no single demarcation point at the property because each cabinet may feed one or more of several buildings on a property.

A competitor seeking to provide service at the MDU is required either to buy the entire loop from the ILEC or to build facilities all the way to each unit. Again, neither option is competition enhancing. Instead, competitive providers should have access to the street cabinet to cross-connect to a requesting customer without required reconfiguration at the property.

OpTel has, on several occasions, requested such access from ILECs, only to be refused on the basis that the FCC does not require sub-loop unbundling. The Commission should, therefore, in combination with reconsideration of the federal demarcation point requirements, revisit its decision not to require sub-loop unbundling. To help make competitive access a reality, ILECs should be required to make sub-loop elements dedicated to a customer's premises available to requesting carriers on an unbundled basis.[3]

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[3] In its recent rulemaking on specific Section 251 requirements, CC Docket No. 98-147, *et al.* (rel. Aug. 7, 1998), the Commission has suggested that it will consider the impact of sub-loop unbundling on the development of advanced services. OpTel will request in that docket that the Commission broaden its inquiry.

Conclusion

The current rules regarding the establishment of a demarcation point in MDUs have proven to be ineffective in practice and manipulable by ILECs to thwart competitive entry. This abuse by ILECs of the discretion given them by the states and the FCC is now impeding federal efforts to develop fully competitive telecommunications markets. The 1996 Act still can be a success story, however, if the Commission and the states work to ensure that practical, as well as legal, access to customers in MDUs is made available to new entrants.

Respectfully,

Louis Brunel
President & CEO
OpTel, Inc.

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